

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

) CASE NO: 22-60043-cml
)
) Houston, Texas
)
FREE SPEECH SYSTEMS, LLC,)
Debtor.) Wednesday, August 24, 2022
)
) 10:01 AM - 10:40 AM
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TRIAL

BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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11 Courtroom Deputy: Unknown

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1 HOUSTON, TEXAS; WEDNESDAY, AUGUST 24, 2022; 10:01 AM

2 (Call to Order)

3 THE COURT: Okay. Good morning, everyone. This
4 is Judge Lopez. Today is August 24th. I'm going to call
5 the 10 a.m. case, which is Free Speech Systems, LLC. Folks,
6 the line is completely unmuted so I would ask everyone to
7 please take a look at your phone and place it on mute. I'm
8 trying to avoid muting the entire line and having people hit
9 5*, but if I start to get a little bit of back noise, I will
10 do that. So, again, please take a look at your phone and
11 just put it on mute at this time and let us proceed. Why
12 don't we take appearances, starting in the courtroom?

13 MR. LEE: Good morning, Your Honor. Nice to see
14 you again.

15 THE COURT: Good to see you.

16 MR. LEE: Kyung Lee with Shannon & Lee on behalf
17 of the Debtor, FSS, Free Speech Systems, LLC. At counsel's
18 table today with me is Marc Schwartz, the Chief
19 Restructuring Officer, and on video, we should have Mr. Ray
20 Battaglia, who is lead counsel for the Debtor and I think we
21 may also have Mr. R. Shannon -- R.J. Shannon, with my firm,
22 but he may be attending a confirmation hearing in front of
23 Judge Rodriguez, so he may not be on video today. But those
24 are the parties in front of you for the Debtor.

25 THE COURT: Thank you. Good morning, Mr.

1 Schwartz.

2 MR. CHAPPLE: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MR. CHAPPLE: Ryan Chapple on behalf of the
5 Connecticut Plaintiffs. I believe my colleague, Alinor
6 Sterling, is on the video, as well.

7 THE COURT: Yes, I see her.

8 MR. CHAPPLE: Okay.

9 THE COURT: Good morning.

10 MR. CHAPPLE: Good morning. Thank you.

11 MR. MOSHENBERG: Good morning, Your Honor.

12 THE COURT: Good morning.

13 MR. MOSHENBERG: Avi Moshenberg on behalf of the
14 Texas Plaintiffs. And also attending by phone is Jarrod
15 Martin, Your Honor.

16 THE COURT: Okay. Good morning.

17 MR. MOSHENBERG: Good morning.

18 MR. NGUYEN: Good morning, Your Honor. Ha Nguyen
19 for the U.S. Trustee. Also with me is Millie Sall, who is
20 the Assistant U.S. Trustee.

21 THE COURT: Okay. Good morning. Good morning.

22 MS. HASELDEN: Good morning, Your Honor. Melissa
23 Haselden, Subchapter 5 Trustee.

24 THE COURT: Good morning. Okay. Anyone wish to
25 make an appearance who is on the phone and attending by

1 video? It sounds like we've got the floor covered, so, Mr.
2 Lee, I'll turn it over to you.

3 MR. LEE: Thank you, Your Honor, and for the
4 record, Kyung Lee for the Debtor, Free Speech Systems, LLC.
5 I think there are three matters today -- well, two really,
6 matters and a third topic which I'd like to address with
7 Court.

8 THE COURT: Okay.

9 MR. LEE: The first is the continuation and the
10 amendment on the Cash Collateral Order.

11 THE COURT: Okay.

12 MR. LEE: And I believe Mr. Battaglia and I have
13 wrote the parties and with PQPR and we have an agreement,
14 which I believe Mr. Battaglia has uploaded to the Court and
15 there's a revised budget. I am not well learned on that
16 topic, so I'm going to have to let Mr. Battaglia address
17 that issue, so that will be Topic #1.

18 THE COURT: Okay.

19 MR. LEE: Topic #2 is, Mr. Chapple and I will
20 update you on where we are on the Emergency Motion of the
21 Stay, Docket #15.

22 THE COURT: Okay.

23 MR. LEE: And then finally, #3 will be a short
24 report from Mr. Schwartz as to the business developments on
25 the case.

1 THE COURT: Okay.

2 MR. LEE: And that will be very short, but I just
3 wanted to let you know that's the structure of today's
4 hearing from the Debtor's perspective.

5 THE COURT: Okay. Thank you very much.

6 MR. LEE: So, I'm going to turn it over to Mr.
7 Battaglia on the Cash Collateral Order.

8 THE COURT: Okay. Mr. Battaglia, can you hear me
9 okay?

10 MR. BATTAGLIA: I can, Your Honor. Can you hear
11 me?

12 THE COURT: Just fine. Thank you. Good morning.

13 MR. BATTAGLIA: Good morning. The Court entered a
14 Cash Collateral Order on August 3rd, I believe it was, and
15 then modified it at a hearing a week or so ago. And what we
16 have done is incorporated those two Orders -- I'm getting
17 feedback here, Judge. I'm sorry. Incorporated those two
18 Orders into a Second Amended Cash Collateral Order. The
19 Order has been circulated and discussed and negotiated with
20 the Plaintiff's counsel, with the U.S. Trustee and with the
21 Subchapter 5 Trustee. The budget attached takes us through
22 September 16th. The Order contemplates a hearing on
23 September 13th at 5:30, which is a date, that I understand
24 has been discussed before.

25 THE COURT: Okay. Let me -- I -- and the proposed

1 Order, is that the version that was filed at Docket #96
2 yesterday? That's the one that I've reviewed.

3 MR. BATTAGLIA: I believe so, Your Honor. It was
4 the Order that was uploaded last night after 7 o'clock or
5 so.

6 THE COURT: Okay. Thank you. That's the one I've
7 had the opportunity to review. Let me hear from other
8 parties who wish to -- and we're just talking about the cash
9 collateral.

10 MR. NGUYEN: Your Honor, if I may address the
11 Court. If we look at the Cash Collateral Budget, and I
12 talked to Mr. Battaglia about this.

13 THE COURT: Mm hm.

14 MR. NGUYEN: There are two payments within the
15 budget, \$100,000 to Mr. Pattis and another \$50,000 to Mr.
16 Renault. Just because it's on the Cash Collateral Budget
17 and Your Honor approved the cash collateral, doesn't mean
18 that those payments are willing to be made. There are
19 pending applications to employ these counsel. I just want
20 to make that real clear. Those payments should not be made
21 until Your Honor signs those employment applications for Mr.
22 Pattis and Mr. Renault.

23 THE COURT: Yeah. I read that as just having it
24 in the budget subject to the Court signing the application,
25 but I appreciate the clarification.

1 MR. NGUYEN: Thank you, Your Honor.

2 THE COURT: Thank you.

3 MR. BATTAGLIA: And Your Honor -- Ray Battaglia,
4 that is clearly what we're doing. There are two conditions
5 precedent to payment, one is retention, and one is a budget.

6 THE COURT: Okay. Thank you.

7 MR. MOSHENBERG: Your Honor, on behalf of the
8 Texas Plaintiffs, we're fine with the proposed Interim Cash
9 Collateral Order.

10 THE COURT: Okay. I just had just a couple of
11 clarifying questions for my part and I'd like to just hear
12 what's going on with the Motion to, let's say, just so I
13 understand where that is so I can think about it all at the
14 same time because they're somewhat interconnected. But the
15 one is -- the simple one is, September 13th works and I'm
16 now going to start teaching a class and it's going to take
17 me away in the morning. But I can do 1 p.m. on September
18 13th -- 1:30 p.m. on September 13th if that would work for
19 the parties. If not, let's pencil that in and then we can
20 find a date that works. But I'll be out that -- most of
21 that morning.

22 MR. MOSHENBERG: Okay. I think tentatively,
23 that's fine, but I'll just double check with my team.

24 THE COURT: Okay.

25 MR. MOSHENBERG: That should work, Your Honor.

1 THE COURT: Okay.

2 MR. MOSHENBERG: In terms of the Motion from the
3 Stay, that's not really a Texas Plaintiffs' issue.

4 THE COURT: Yeah.

5 MR. MOSHENBERG: So, if you'd like, we can hand it
6 over.

7 THE COURT: Just to, kind of, hear your thoughts,
8 Mr. Chapple, just as it all relates together because it
9 sounds like these -- there are certainly items within the
10 budget that contemplate a resolution on the Motion to Lift
11 Stay, although nothing has been put before me. I just want
12 to understand so I understand -- fully understand what's
13 happening in the budget.

14 MR. CHAPPLE: That's correct, Your Honor. Excuse
15 me. And I appreciate the opportunity. So, let me -- let me
16 catch the Court up to speed on goings on the past few days.
17 We have been negotiating back and forth with the Debtor -- I
18 say, "we", the Connecticut Plaintiffs, knowing that the
19 hearing on the Connecticut Plaintiffs' Emergency Lift Stay
20 is set for today. We had gotten Your Honor to the point
21 where we were exchanging red-lines and an Agreed Order.
22 There are two issues hanging out there that are yet to be
23 agreed to. One, I don't have any heartburn about it being
24 resolved. The other one, I thought we were far along to get
25 it resolved, and then Your Honor, last night I saw the

1 Applications to Employ that were filed by the Debtors,
2 specifically the application to employ Mr. Pattis. I
3 believe on the current version that is filed, the
4 application, the Debtors are seeking authority to pay Mr.
5 Pattis for fees that he alleges that he incurred during the
6 month of August, when the Stay was in place, when the
7 Connecticut -- and Your Honor, let me -- pardon me, let me
8 segue just a little bit. We -- we filed a Notice of Filing
9 with you a week or so ago.

10 THE COURT: On the remand?

11 MR. CHAPPLE: Yes, Your Honor.

12 THE COURT: Right.

13 MR. CHAPPLE: To make sure the Court was fully
14 aware of the goings on in Connecticut.

15 THE COURT: I appreciate it.

16 MR. CHAPPLE: And so, basically, what has been
17 going on in Connecticut, the trial judge said that they were
18 going to proceed against Mr. Jones only, that the claims
19 against Free Speech were stayed, there was a removal, there
20 was a remand back. In the Remand Order, the Connecticut
21 Bankruptcy Court judge specifically held that the Trial
22 Court judge was acting properly, was not violating the Stay,
23 was only pursuing the claims -- or was only allowing the
24 claims against Mr. Jones to go forward. They had this
25 antiquated jury selection process that we talked about in

1 Connecticut where it takes, essentially, three or four weeks
2 to pick a jury. They do individual voir dire. So, they've
3 been going through that process as to the Connecticut
4 Plaintiffs and to Mr. Jones. So, in our discussions, we had
5 talked about a resolution that included the Connecticut
6 Plaintiffs not objecting to the retention of Mr. Jones or
7 Mr. Renault -- excuse me, Mr. Pattis or Mr. Renault. Mr.
8 Renault is a little bit of a different animal because he's
9 going to be paid hourly as I understand it. Mr. Pattis is
10 seeking a flat fee -- a flat monthly fee for the time that
11 he's going to be trying the case in Connecticut. Our
12 discussions have been focused on that fee going forward,
13 from the day the Stay would be lifted.

14 THE COURT: Prospectively. Got it.

15 MR. CHAPPLE: Going forward, yes.

16 THE COURT: Okay.

17 MR. CHAPPLE: Now, when I saw the application, I
18 saw that, as it's written, the Debtor is seeking
19 authorization to pay fees for Mr. Pattis for August work.
20 Now, we can't -- the Connecticut Plaintiffs, and I don't
21 think anyone else in this case, can agree to that and we're
22 not going to agree with that. I spoke with Mr. Lee this
23 morning. It's my understanding that the application was
24 filed because we wanted to get something in front of you
25 before the hearing. It's my understanding that they are

1 working on that issue, so my thought is, the applications
2 get set at a date certain in the near future, the hearing on
3 the Motion to Lift Stay gets set on that day. Contingent in
4 our Agreed Order Lifting Stay would be your approval of the
5 retention of them so they can have counsel in Connecticut.
6 And in the meantime, we'll continue to work with the Debtor
7 to try to resolve those two issues. One that I told you I
8 don't think will be a problem, this other one is the one
9 that I just described. I'm hoping that we can get there, if
10 we can, then I think it should be -- and I don't want to
11 speak out of turn. I know that -- I know that the United
12 States Trustee's Office may have questions, the other
13 parties may have questions, but that's just --

14 THE COURT: Yeah. The applications got filed --
15 no, I appreciate it.

16 MR. CHAPPLE: That's, kind of, where we --

17 THE COURT: An application was filed, and everyone
18 can have an opportunity to look at it and react to it.

19 MR. CHAPPLE: Sure.

20 THE COURT: But I appreciate the update.

21 MR. CHAPPLE: Yes.

22 THE COURT: That's what I needed to hear.

23 MR. CHAPPLE: Okay.

24 THE COURT: I needed to understand -- kind of,
25 understand where things stand. So, there is a process that

1 has started in Connecticut, I'm assuming? It sounds like
2 against Mr. Jones and --

3 MR. CHAPPLE: That's correct, Your Honor.

4 THE COURT: -- if the Stay then is lifted, then
5 the Connecticut State Court would then, essentially, take
6 out all the cases, including Free Speech, the second time
7 (indiscernible)

8 MR. CHAPPLE: Correct, correct, correct. Yes.

9 THE COURT: Okay, okay, okay. Just from a timing
10 standpoint, Mr. Lee, when do y'all contemplate wanting to
11 come back on the applications/the Motion? There's a process
12 that's starting. I take it we need to take these
13 applications up on an expedited basis to start that process,
14 which is fine for me. I think, if this is the route that
15 everybody wants to go, the parties are working together, it
16 sounds like a smart idea. And I believe that, you know, if
17 Free Speech -- the Stay is going to be lifted, Free Speech
18 needs representation, everybody knows that. And I think
19 Free Speech should have a fair opportunity to hire their
20 counsel and you know, they should be responsible for their
21 fair share of the fees, whatever that is, going forward. So
22 -- but all those issues are not before me today, but I
23 appreciate the update. I just need to understand the timing
24 of that, so I understand how we sync it with the Final Cash
25 Collateral Hearing. Do you want to -- it sounds like you

1 need to come before the Final Cash Collateral Hearing, a
2 separate hearing.

3 MR. LEE: Yes, Your Honor.

4 MR. CHAPPLE: Your Honor my thought -- and I
5 haven't spoken with Mr. Lee about this directly, but would
6 be, the latter part of next week. And of course, I'd like
7 to hear from the U.S. Trustee's Office, as well, because I
8 know -- but that -- Your Honor, I believe if there is a --
9 if an agreement is going to be reached, it'll happen
10 relatively quickly.

11 THE COURT: Okay.

12 MR. CHAPPLE: At least from our perspective. I
13 know that there are other parties who may have issues with
14 the application.

15 MR. LEE: Your Honor, from the Debtor's
16 perspective, I know I'm pushing the envelope, but we were
17 expecting to come back Friday.

18 THE COURT: Let me -- let me hear from the --

19 MR. LEE: And I thought that's what I mentioned to
20 Mr. Chapple, but we're willing to come back Friday to get
21 this done and to talk to everyone. And we're amenable to
22 whatever schedule, but we understand the importance of this
23 in Connecticut and the fact that there's jury selection
24 taking place, and we want to be participating in that. And
25 I don't want to address all the issues that Mr. Chapple did

1 --

2 THE COURT: I understand.

3 MR. LEE: But we need to be up there and so, we're
4 ready to proceed as quickly as possible.

5 THE COURT: Okay.

6 MR. CHAPPLE: And one point that I would make, I -
7 - Mr. Lee and I had a conversation and Friday sounded
8 reasonable and doable to me and that was before I saw their
9 application. So, I -- you know, I just -- I want to make
10 sure we have an adequate time to address that issue.

11 THE COURT: Okay. Thank you.

12 MR. NGUYEN: Your Honor --

13 THE COURT: Yes.

14 MR. NGUYEN: I can just address the two
15 applications. I certainly --

16 THE COURT: Again, you don't have to give me your
17 thoughts on them, just the timing issue is -- I know you
18 have to do your work and I want to give you a full and fair
19 opportunity to do it.

20 MR. NGUYEN: I -- Your Honor, I agree with the
21 Court that FSS needs representation in State Court, but my
22 only issue is what Your Honor mentioned earlier. Is FSS
23 paying its fair share of the legal fees for representation
24 in State Court? Under the current application, FSS is
25 paying the entire fee for both FSS and Mr. Jones. My

1 understanding is that there's an indemnification, but that
2 indemnification was signed earlier this year. So, I don't
3 know if the estate is contractually obligated to pay Mr.
4 Jones' legal fees, and so, I, kind of, don't want to rush
5 things because we're talking about \$300,000 going to Mr.
6 Pattis. That's significant funds that could be used to pay
7 creditors in this estate. I don't fully understand the full
8 scope of the indemnification. My understanding is that it
9 was recently executed for Mr. Jones. And there are a lot of
10 other questions in terms of Section 327(e). Really, if --
11 it's great that the Plaintiff are agreeing to -- not opposed
12 to these objections, but we have a statutory duty to look at
13 them.

14 THE COURT: Oh, absolutely.

15 MR. NGUYEN: The Court has an independent duty to
16 look at them, whether Mr. Pattis and Mr. Renault qualifies
17 under 327(e). So, we're willing to work as quick as
18 possible to get the Plaintiff to Connecticut State Court to
19 have a jury trial in their claim. I'm willing to work with
20 the Debtors. I need some cooperation from them. I need to
21 see what the Employment Contracts look like. I need to
22 understand the payments between the -- the fee splitting.
23 At this time, it's 100 percent FSS. I want to understand
24 why that's appropriate. And then I also want to understand
25 how the Debtors meet the requirement under 327(e). There

1 might be claims by the estate based on some of the conduct
2 that occurred in the Texas State Court with the mishandling
3 of medical records. So, those are all issues that we need
4 to evaluate. I'll willing to go into next week, but I need
5 some cooperation from the parties to provide me with
6 documents and some of my answers -- some answers to my
7 inquiries.

8 THE COURT: All right. I feel like we should, at
9 least, take this up on Monday. And it sounds like the
10 parties need an opportunity to talk. The U.S. Trustee is
11 saying that they have some questions, but I think Monday is
12 really fast, to take it up on an expedited basis. We can
13 take it up on Monday and parties have -- I'm sure parties
14 will be working through the weekend on that and talking
15 about issues. And Mr. Chapple, that'll give y'all an
16 opportunity to review, have conversations, dialogs with Mr.
17 Lee. We can meet probably at 11 a.m. if the parties want or
18 in the afternoon. I'm willing to do that. Just this week,
19 I -- I don't know what's going to get accomplished in two
20 days and I think the parties need to think about what I said
21 earlier, and maybe have an opportunity to speak. And
22 there's also two lawyers who are seeking applications and
23 they're not in the courtroom, so I don't want to -- I want
24 to give them an opportunity to think about some things, as
25 well, in fairness to them. But look, I do think Free Speech

1 -- the Stay is going to lift. They're going to need
2 adequate representation and they should have an opportunity
3 like everybody. 327 says what it says, but as long as Free
4 Speech is paying its fair share, I think that's what I'll be
5 focused on.

6 MR. CHAPPLE: Okay. Your Honor, just one point of
7 scheduling. And I can take a short break and see if I can
8 get coverage, but I'm on a plane Monday and it's, I believe,
9 a four or so hour flight. So, that, kind of, kills my day.
10 Is Tuesday available with the Court? If not, I can make a
11 few calls.

12 THE COURT: I start a two-day trial all day.

13 MR. CHAPPLE: Okay.

14 THE COURT: -- on the 30th and the 31st, but why
15 doesn't everyone take a look at their schedules and then we
16 can reach out to my Case Manager and maybe I can carve out a
17 time within -- if it's going to be contested, I would need
18 to know. That'll carve out some more time. Monday, I know,
19 for sure, works. If not, then I think Thursday -- next
20 Thursday afternoon.

21 MR. CHAPPLE: Okay. Let's --

22 THE COURT: September 1st because I have that two-
23 day trial and that's going to go all day. If not, then next
24 Thursday afternoon would be the time to do it.

25 MR. CHAPPLE: If you don't mind, I'll --

1 THE COURT: No, no, no. Take your time.

2 MR. CHAPPLE: -- I'll make a few calls and see if

3 --

4 THE COURT: And we don't have to set anything

5 today.

6 MR. CHAPPLE: Okay.

7 THE COURT: I'm just giving everyone -- you know,

8 next Thursday or next Friday would also --

9 MR. CHAPPLE: And the Monday time was, you said,
10 at 11 a.m., Your Honor?

11 THE COURT: 11 a.m. or -- if it's -- if it's

12 Monday and we need to have a hearing that's late to

13 accommodate, if it works for the parties, I won't be the

14 hold up.

15 MR. CHAPPLE: Okay.

16 THE COURT: All right. We have Court 6 p.m. if

17 you want it. I don't -- it just depends on how the parties

18 are proceeding and if it makes sense to have it or not. But

19 I -- the Court will be available. I won't be the hold up.

20 MR. CHAPPLE: Thank you, Your Honor.

21 THE COURT: Okay.

22 MR. LEE: And Your Honor, one --

23 MR. BATTAGLIA: Your Honor, may I address the

24 Court?

25 THE COURT: Yes, after I apologize to my staff for

1 making that statement. Yes, yes.

2 MR. BATTAGLIA: This is Mr. Battaglia on behalf of
3 Free Speech Systems. Obviously, speed is important here. A
4 jury is being selected and put in the box as we speak. And
5 Mr. Pattis is currently representing only one party and yet,
6 a proposed Lift Stay Order does contemplate that people are
7 waiving objections to the selection of the jury based on the
8 Stay. Mr. Pattis is in an awful position for selecting a
9 jury for one party and yet, the expectation is that this
10 trial will go forward as to both parties. So, speed is
11 really, really important.

12 THE COURT: If we could do it on Monday. If
13 there's a time -- I know you're flying. Just let's find a
14 time.

15 MR. CHAPPLE: Yes, sir.

16 THE COURT: Or if we need to -- if earlier is
17 better, in the morning, then we can do that, as well. And
18 maybe I can move my 10 a.m., I just --

19 MR. CHAPPLE: Well, and I may be able to move it -
20 -

21 THE COURT: -- would have to work my Case Manager.

22 MR. CHAPPLE: -- and travel the day before or the
23 day after.

24 THE COURT: Okay.

25 MR. CHAPPLE: So, I'll (indiscernible)

1 THE COURT: So, why don't the parties just work on
2 it and let's see if we can set a date and a time this
3 afternoon. Just work with my Case Manager. She'll --
4 she'll have authority. Just give you the date and we'll
5 lock it in. Okay?

6 MR. LEE: One last item so that we don't bother
7 Ms. Saldania over and over again, can you set us a new
8 deadline to file witness and exhibit lists, just in case we
9 don't come to an agreement, Your Honor?

10 THE COURT: Yeah, I think for that one, if we go
11 on Monday, then quite frankly, I think if you got me
12 something -- and again, witness and exhibit lists can be --
13 I would want to know something by Friday and I'll just call
14 it Friday.

15 MR. LEE: All right. Close of business on Friday.
16 How about that, Your Honor?

17 THE COURT: I mean, Friday.

18 MR. LEE: Thank you. All right.

19 THE COURT: Yeah.

20 MR. LEE: Thank you, Your Honor.

21 THE COURT: Yeah, yeah. I mean Friday, whatever.
22 I'll come in on Saturday morning and I'll know if we're
23 going live or not. But there'll be something on Friday. I
24 won't put a time limit on it.

25 MR. LEE: Thank you, Your Honor. I think

1 (indiscernible) short brief report on the business --

2 THE COURT: Let me -- let me just talk quickly
3 about the cash collateral.

4 MR. LEE: Oh, I apologize.

5 THE COURT: With that in mind, and assuming the
6 parties can do 1 p.m., that can get tweaked on -- for
7 September 13th. I can do that. Oh, 1:30, I can do that
8 time, for sure. If we need to do -- we could have it there
9 -- the one question I had was just to understand -- there
10 was a notice of payment -- I know I approved a \$250,000
11 payment to PQPR in the interim. This -- and there was a
12 notice filed that PQPR was paid that and that's entirely
13 appropriate under my Order. This Order seems to suggest
14 that there will be an additional payment and I don't know if
15 there's overlap between the -- this payment is for \$750,000
16 and I don't understand if there's overlap between the
17 \$250,000 that was paid, according to the notice, and that
18 we're just talking an additional \$500,000 with a claw back
19 or if we're talking an additional \$750,000. When I looked
20 at the budget, I think it just refers to the extra \$500,000,
21 but I need to -- just -- that's just a clarification
22 question for me.

23 MR. LEE: Judge Lopez, may Mr. Schwartz address
24 that for you or --

25 THE COURT: Yes, or whoever. Mr. Battaglia --

1 MR. BATTAGLIA: Your Honor, let me address it for
2 you (indiscernible).

3 THE COURT: Okay.

4 MR. BATTAGLIA: Your Honor, the total PQPR
5 reimbursement is \$750,000. \$250,000 was included in the
6 First Interim Order. The additional \$500,000 is included in
7 this Order. I think the reference in the written terms of
8 the Order is to say that the claw back (indiscernible) the
9 whole \$750,000.

10 THE COURT: Got it. Thank you. That's the
11 clarification I needed. And if I approve this, the claw
12 back right is going to have to have some meaning to it. So,
13 PQPR -- I don't see this (indiscernible) so, I have to
14 understand and I need to -- Mr. Schwartz, I need you to just
15 think about it. It's got to have some meaning so that if --
16 I don't know anything, but I'm assuming just worst case
17 scenario for PQPR that there is an Order issuing a claw back
18 -- the money has to be there to give back. I don't want to
19 find myself in a situation where \$750,000 has been paid to
20 the estate and there's only \$100,000 by the time the claw
21 back comes back. I'm making up a hypothetical and no-one
22 should read anything into it. I'm just -- I -- I know what
23 I know about PQPR based upon the initial hearing. There's
24 an agreement between the parties, there's a claw back right.
25 So -- and it applies to the entire \$750,000 that was

1 contemplated in the budget. I've got no problems with that.
2 I just want to make sure that everybody's clear that the
3 claw back right has to have some substance, if that's what
4 I'm being asked to sign. And so, PQPR is going to have to
5 understand that Mr. Schwartz -- and if someone needs to come
6 back and ask me for something different based upon what you
7 learn, then let me know. But I just want to make sure --
8 and what I'm discussing, for folks on the phone, is
9 incredibly standard bankruptcy talk when it comes to,
10 essentially -- in case, a claw back right that the judge may
11 -- if the judge allows -- if it comes, it comes, if it never
12 does, it never does. But if it comes, then I just want to
13 make sure that the parties have the ability to seek relief
14 that I would be granting in this Order and that it would
15 have some merit. I just don't know what I don't know.
16 Okay? So, let me ask -- does anyone wish to be heard on the
17 -- what I would call the Second Interim Cash Collateral
18 Order?

19 Okay, so I would just note for the record then,
20 that the Court, on August 5th, signed an initial Cash
21 Collateral Order authorizing the use of cash collateral.
22 There was a budget attached to that and it set a further
23 hearing for today. The parties are in discussions with
24 regard to the Motion to Lift the Stay. There was also a
25 Motion to Lift the Stay set for today, as well. It appears

1 that the parties are reaching a resolution. Everybody's
2 rights are reserved, obviously. It sounds like the parties
3 need some more time to talk and it makes sense to have a
4 continued hearing on cash collateral, subject to everyone's
5 rights at a final. I am encouraged to hear, and I'm sure
6 Mr. Schwartz will tell me -- it sounds like business is
7 going a little better than expected or as you expected when
8 we came back for the modification to the Interim Cash
9 Collateral Order. It seems like sales are up, which is,
10 obviously, very good for the estate. And I do note, I did
11 review the budget and I did see the agreements with respect
12 to payments to insiders and the continuation of the
13 arrangement with Blue Ascension to continue. So, I did get
14 a chance to really study it really hard and compared it to
15 the original budget and to the budget that was -- the
16 modified -- as modified by the Order and then what was posed
17 here.

18 I'm comfortable with granting a continued Cash
19 Collateral Interim Order subject to a final. But I would
20 ask the parties to communicate my thoughts on, kind of, the
21 one part that I talked about, and I will sign that Order and
22 enter it on the docket today. I would note that signing
23 this Interim Cash Collateral Order further facilitates if
24 there's going to be agreement on -- or a trial. In
25 Connecticut State Court, there has to be some additional use

1 of cash collateral to pay for professionals and to allow the
2 estate to continue uninterrupted during that time. And so,
3 these Orders really go hand-in-hand, which is why I wanted
4 to understand what was happening there before I ruled on the
5 Interim Cash Collateral Order. I appreciate that all the
6 parties have been working together and I would note for the
7 record, that the initial use of cash collateral was heavily
8 contested, right, and so was the modification to that. So,
9 the fact that the parties are working together, I see the
10 Subchapter 5 Trustee here, I see the United States Trustee
11 here, I see parties with a vested interest in this estate.
12 The Texas Plaintiffs are here, the Connecticut Plaintiffs
13 are here and they've all been in discussions. It gives the
14 Court a little comfort about the process. And so, I thank
15 everyone for their hard work and I know that everybody's
16 rights are reserved in a final. I've reviewed the Order and
17 I'll sign it and get it on the docket today. The only
18 change I'll make is to the hearing time, which would be 1
19 p.m. Okay?

20 MR. LEE: Thank you, Your Honor.

21 THE COURT: Okay.

22 MR. BATTAGLIA: Your Honor, do you require that I
23 modify the Order, or will you do it?

24 THE COURT: Oh, no. I'll take care of that. I
25 think you can trust me on this one.

1 MR. BATTAGLIA: Thanks, Judge.

2 THE COURT: No, I'll do that. Let everyone focus
3 on more important matters. I'll get that signed and on the
4 docket shortly. We've heard about -- let me ask, with
5 respect to the Lift Stay update, I did get a chance to hear
6 from the U.S. Trustee and from other parties. Is there
7 anyone who wishes to address the Court to provide any form
8 of a statement or update as they think about the Motion to
9 Lift Stay? No-one has to say anything, I'm just opening it
10 up.

11 THE COURT: Okay. We'll -- we'll take that up.
12 We need to talk about timing on that Motion. But if so, it
13 should go hand-in-hand with the applications, is that
14 correct?

15 MR. CHAPPLE: That's correct, Your Honor. Yes.

16 THE COURT: And if -- so that means that the
17 continued hearing on the hearing -- the Motion to Lift Stay
18 has got to go forward on Monday, as well. Right?

19 MR. CHAPPLE: Yes, Your Honor.

20 THE COURT: Okay. Yeah, so then I'm really
21 holding everyone to a Friday witness and exhibit list.
22 We'll call it Friday. I will sign no extensions. I don't
23 trust you all. Just kidding. We will, on Friday, at least
24 some form of a witness and exhibit list so that the parties
25 understand and the parties have an opportunity to see where

1 we are with respect to the applications and to the Motions -
2 - the Motion to Lift the Automatic Stay.

3 MR. LEE: One final point, Your Honor. I just
4 want to make the Court clear, for these purposes, that the
5 Automatic Stay continues in place until we conclude that
6 hearing on Monday afternoon.

7 THE COURT: That's correct.

8 MR. LEE: Thank you, Your Honor.

9 THE COURT: That's correct.

10 MR. CHAPPLE: Your Honor, one other question. I
11 just -- I want to make sure -- I don't want to hold the
12 Court up on a Friday afternoon. You said Friday, so we can
13 file Friday evening? You're not going to look at it until -
14 -

15 THE COURT: I mean Friday, yeah. Friday.

16 MR. CHAPPLE: Okay.

17 THE COURT: 11:59 p.m., you know.

18 MR. CHAPPLE: Thank you for the clarification,
19 Judge.

20 THE COURT: Mm hm. Mr. Schwartz? Okay, Mr.
21 Schwartz?

22 MR. SCHWARTZ: Thank you, Your Honor.

23 THE COURT: You're smiling. It tells me you've
24 got good news.

25 MR. SCHWARTZ: Operation it's good news. First

1 off, the last time we were here, back log, which you
2 mentioned that hearing. It is -- for all practices
3 purposes, that back log has been worked off.

4 THE COURT: Okay.

5 MR. SCHWARTZ: We now have the back log down. We
6 have a back log but it's because we have a large number of
7 orders for a product that is not -- could not be released
8 yet. So, those orders are waiting that date so we could
9 then process them. That happens to be -- it's a book and
10 the publisher won't let us (indiscernible) until the release
11 date for the book itself.

12 THE COURT: Okay.

13 MR. SCHWARTZ: So, that's primarily -- that's the
14 back log is a day and a half's worth of work and we've been
15 running at high volumes with orders.

16 THE COURT: Okay.

17 MR. SCHWARTZ: So, that's normal.

18 THE COURT: How has the process with Blue
19 Ascension been working? The modification?

20 MR. SCHWARTZ: Well, Your Honor, Blue Ascension
21 didn't give the processor it's banking information until, I
22 think, late last Friday. So, in fact, what you saw on the
23 variance report was the fulfillment cost. I paid it, FSS
24 paid it. We realized (indiscernible) what's going on here
25 and Blue Ascension didn't give them the information yet and

1 said, "Could you send us some money because we don't have
2 any?", and so that's how that is working.

3 THE COURT: Okay.

4 MR. SCHWARTZ: And so, it's hopefully this week is
5 running now the way we wanted it to.

6 THE COURT: Okay.

7 MR. SCHWARTZ: We're still bringing in new
8 products with our sales -- in essence \$500,000 a week before
9 we filed bankruptcy. I think we put the budget in at
10 \$525,000 or something like that.

11 THE COURT: Mm hm.

12 MR. SCHWARTZ: We're very -- we're just shy of a
13 million dollars in cool basis sales for last week and we
14 expect to be at a million dollars, and almost a steady state
15 there for a while. The company's done much better than that
16 in prior years. We're working with Mr. Jones, Alex Jones,
17 and with the eCommerce Manager on inventory levels and
18 financing the inventory, etc. So, okay, we could probably
19 handle (indiscernible) state of about a million dollars a
20 week in sales up and down. Let's see, we are working on --
21 the company has never had a restocking plan. They run out
22 and (indiscernible) buy something as opposed to looking at
23 what they have and anticipating to replenish. So, we are
24 already working on plan right now to get a methodical
25 restocking program. And once we get some of these Court

1 issues out of the way, I'd rather spend more time on that
2 side of it, which I think will make a significant
3 difference. And making the profitability of the products,
4 the supplements -- a huge mark up on it. If you go buy a
5 bottle of iron or whatever, over the counter or on Amazon,
6 it's got a 300-400 percent markup on it. And that's -- we
7 have the same kind of markup on it, over several percent.
8 Employee headcount is down to 48, which is good. Every one
9 of the former employees is either going to work for Blue
10 Ascension or found themselves another job. I don't know
11 (indiscernible) not working. Big (indiscernible) this week,
12 substantially all of our vendors who used to use the Amex
13 card, for example, Amazon Web Services (AWS), they charged
14 the Amex card for our monthly bills (indiscernible). We
15 believe we've gotten substantially all the vendors now
16 converted over to a debit card, which I have and I control.
17 And that's a huge -- because those vendors won't operate --
18 won't provide a service, so they want -- they don't want a
19 wire transfer, ACH, so on. It's a card --

20 THE COURT: Got it.

21 MR. SCHWARTZ: -- to charge. Another change in
22 effect is, we've gotten a routine in place (indiscernible)
23 accounting. Another big changes. We couldn't understand
24 why we were in some of these crises. You haven't paid this
25 bill and (indiscernible) cut us off. That kept happening

1 and we couldn't figure out why. Turns out, the email
2 address that we thought was the email address for the
3 accounting practice for years, was supposed to be sent to,
4 was not an email address. It was called a group-something.
5 So, the invoices have been going somewhere out there and
6 sitting on someone's computer, really. (indiscernible)
7 became a crisis and then they'd send it to us. That now is
8 a real email address, so now the bills are coming to us and
9 we've told everyone to get us the bills by 1 o'clock on
10 Wednesday and they're paid on Friday. And we've done that
11 now -- well, last week was the first week we really had that
12 done. And just (indiscernible) fumbling around trying to
13 figure out how to use the e-payment system because I've
14 never really been authorized for payments. We've got the
15 bills paid a little bit later. And this week, we'll have
16 (indiscernible) because I don't know which button to push
17 now.

18 One other matter I wanted to bring to your
19 attention is the (indiscernible) budget for \$250,000. That
20 was not paid as originally planned. Mainly because we
21 didn't have any banking information for PQPR. We finally
22 got the banking information last week and worked out how to
23 (indiscernible) and they actually got paid, I believe, this
24 week, some wire, actually it should arrive in that bank.

25 THE COURT: Okay.

1 MR. SCHWARTZ: But after that, now we're on course
2 with that. So, that's a big improvement, getting the
3 accounting squared away.

4 THE COURT: Okay. Thank you very much.

5 MR. SCHWARTZ: Thank you.

6 THE COURT: Okay. So, I'll sign the Cash -- the
7 Interim Cash Collateral Order. I'll get that on the docket
8 today. We will set a time, tentatively for Monday to
9 consider the applications and the Motion to Lift the
10 Automatic Stay at the same time. Witness and exhibit lists
11 will be due on Friday, August 26th and I encourage the
12 parties to continue to talk productively. I appreciate that
13 everybody's talking. I encourage the parties to continue to
14 talk and give some thought to the things that I've said and
15 I guess we'll see each other on Monday.

16 MR. LEE: Thank you, Your Honor.

17 THE COURT: Anything else we need to talk about
18 today?

19 MR. LEE: Not from the Debtor's perspective, Your
20 Honor.

21 THE COURT: Okay. Thank you very much.

22 MR. LEE: Thank you.

23 THE COURT: I'll see everyone on Monday.

24 MR. LEE: Thank you, Your Honor.

25 (Proceedings adjourned at 10:40 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from
the electronic sound recording of the proceedings in the
above-entitled matter.

A handwritten signature in black ink that reads "Sonya M. Ledanski Hyde". The signature is written in a cursive, flowing style.

Sonya Ledanski Hyde

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Date: February 17, 2023